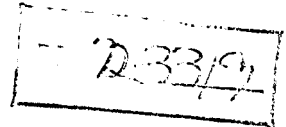


OGC 72-1017



20 JUL 1972

MEMORANDUM FOR: Executive Director-Comptroller

SUBJECT : CIA Regulation Under E. O. 11652 for Publication
in the Federal Register

1. This memorandum contains a recommendation for approval of the Executive Director-Comptroller. Such recommendation is contained in paragraph 5.

AT 2. implementing E. O. 11652 was approved by the Executive Director on 13 June and became effective on 30 June. The regulation included an Annex A which prescribes the rights of members of the public to have access to CIA documents and to have classified documents reviewed for declassification and sets out procedures for such requests. (Annex A also is a revised implementing regulation under the Freedom of Information Act.) By its terms, Annex A is to become effective "upon its publication in the Federal Register."

3. There are a number of errors in Annex A and several items which warrant clarification or improvement. The attached revision of the Annex (Tab A of this memorandum) is to accomplish these corrections and improvements. For reference, the existing Annex A is attached at Tab B.

4. The changes are as follows:

a. In subparagraph 4(c) the words "enough specificity" have been replaced by the words "sufficient particularity." The latter words are used in the NSC Directive and elsewhere in Annex A.

b. Subparagraph 5(b) includes some clarifying language.

c. In subparagraph 6(c) the words "principles prescribed for classification decisions by E. O. 11652 and implementing

directives and regulations" are replaced with the words "criteria set forth in Section 5(B) of E.O. 11652." A similar change is made in subparagraph 8(c). This accords with the requirements of the NSC Directive.

d. Subparagraph 6(c)(1) has been modified to require the Agency component which, upon request, reviews a document and retains its classification, to, "unless it is not possible to do so, set a date on which the document shall be declassified automatically." This is required by the NSC Directive.

e. In the penultimate sentence of subparagraph 6(d), the words "shall set a date on which the document shall become declassified" are replaced with the words "the period of time in which the document shall continue to be classified." This is a more accurate implementation of the NSC Directive.

f. The last word of the first sentence of subparagraph 6(e), "referral", is replaced by the words "request by the Assistant to the Director." This also is required by the NSC Directive.

g. An incorrect reference to "paragraph 9" in the last line of subparagraph 6(e) has been changed to "paragraph 8."

h. The last sentence of paragraph 7 which precedes subparagraph 7(a) has been added and subparagraphs 7(a) and 7(b) slightly revised. They provide that the Agency may (but is not so required) make available a document exempt under the Freedom of Information Act for reasons other than that it is classified, when on the basis of applicable law, regulations and policy the Agency desires to do so. This is consistent with the spirit of E.O. 11652 and the Freedom of Information Act.

i. In subparagraphs 8(a) and 8(b) of the existing Annex, an individual who had requested declassification review of documents less than 10 years old and whose request had been rejected because of the age of the documents (see subparagraph 6(b)).

could appeal that decision to the CIA Information Review Committee. Such an appeal is not required by the Directive and would be a futile exercise since the age of a document generally is not a matter for disagreement. This has been corrected by omitting from the appeal provisions of subparagraphs 8(a) and 8(b) the reference to subparagraph 6(b).

j. An incorrect reference to "subparagraph 10(a)", in subparagraph 8(b), has been changed to "subparagraph (c)" of paragraph 8.

k. Subparagraph 9(a) of the existing Annex has become subparagraph 8(c) and subparagraph 9(b) has been combined into what is now paragraph 10.

l. Paragraph 9 has been revised to avoid any suggestion that a requester for declassification whose request is denied by the Agency component may appeal directly to the Interagency Classification Review Committee (ICRC) without first appealing to the CIA Information Review Committee. The paragraph also makes clear that a denial of a request for a document under the Freedom of Information Act (except denials for classified documents) may not be appealed to the ICRC.

m. The last sentence of paragraph 11 is new and is designed to tell the public how to pay any fees which may be required.

n. There is a correction of a grammatical error in paragraph 12.

5. Under the NSC Directive, regulations of the various agencies are to be approved by the Interagency Classification Review Committee and upon such approval "shall be published in the Federal Register to the extent they affect the general public." The CIA regulation, including Annex A, has been approved by the ICRC. The ICRC proposes to publish as soon as possible in a single issue of the Federal Register the pertinent regulations of all the agencies. We have been asked to get our revised regulation to that Committee as soon as possible, so that it may forward to the Federal Register people early next week all of the regulations of the various agencies which are to be published in the Federal Register. It is recommended, therefore, that you approve the attached revised

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

General Counsel

EXTENSION

NO.

DATE

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

RECEIVED

FORWARDED

1. Asst. to the Director
1F04 Hqs.

7/20/72

✓

1 - 9 FOR CONCURRENCE:

2.

3. DD/P
3C34 Hqs.

July 21

✓

4.

5. DD/I
7E44 Hqs.

7/20/72

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6.

7. DD/S
7D26 Hqs.

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9. DD/S&T
6E60 Hqs.

7/20

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10.

11. ExDir-Compt.
7D59 Hqs.

7/21

7/21

WCC / 5/8

FOR APPROVAL:

12.

13. General Counsel
7D07 Hqs.

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14.

15.

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CENTRAL INTELLIGENCE AGENCY
Public Access to Documents and Records - Declassification Requests

1. Authority. This regulation is issued under the authority of the National Security Act of 1947, the Central Intelligence Agency Act of 1949, the Freedom of Information Act (5 U.S.C. 552), and Executive Order 11652.

2. Purpose. Pursuant to the requirements of the Freedom of Information Act and pursuant to Executive Order 11652, the following are established as the rules of procedure with respect to public access to the records of the Central Intelligence Agency and requests for classification review of classified information and material.

3. Organization and Requests for Information. The headquarters of the Central Intelligence Agency is located in Fairfax County, Virginia. Functions are channeled and determined by regular chain-of-command procedures. Other than this regulation there are no formal or informal procedural requirements regarding public access to Agency records. Requests for information and decisions and other submittals may be addressed to The Assistant to the Director, Central Intelligence Agency, Washington, D. C. 20505. 06

4. Requests for Documents or Classification Review.

(a) Any person may request that any identifiable records or documents be made available.

(b) Any person may request a classification review of records or documents which are classified under E. O. 11652, or any predecessor Executive Order, and are more than ten (10) years old.

(c) Requests may be addressed to The Assistant to the Director, Central Intelligence Agency, Washington, D. C. 20505. Requests need not be made on any special form but may be by letter or other written communication setting forth the pertinent facts with sufficient particularity that the requested document or record can be located or identified with a reasonable amount of effort.

5. Processing Requests.

(a) The Assistant to the Director shall promptly acknowledge receipt, in writing, and refer the request to the Agency component having responsibility for the records or matter involved (the responsible component).

(b) The responsible component shall undertake to locate or identify the document. If the request does not describe the document with sufficient particularity to permit it to be located or identified with reasonable effort, the responsible component shall so inform the Assistant to the Director. The Assistant to the Director will advise the requester that unless additional identifying information is furnished the request cannot be processed further. The requester may then resubmit his request, furnishing additional identifying information. Any resubmitted request also shall be processed in accordance with this regulation. If the responsible component determines that the request is unduly burdensome, it shall so inform the Assistant to the Director who thereupon shall ask the requester to limit his request to records that are reasonably obtainable.

6. Action on Requests Involving Classified Documents. Upon locating a requested document or upon identifying it sufficiently to permit the making of the appropriate determinations under this paragraph, the responsible component shall determine the date of origin of the document and whether the document is classified under E. O. 11652 or any predecessor Executive Order.

(a) If the component determines that the document is unclassified, the request shall be further processed under paragraph 7 of this regulation.

(b) If the component determines that the document is classified and is less than ten (10) years old, he shall so inform the Assistant to the Director, who thereupon shall deny the request.

(c) If the component determines that the document is classified and is between ten (10) and thirty (30) years old, it shall review the classification and continue, modify, or remove the classification based on the criteria set forth in Section 5 (B) of E. O. 11652.

(1) If the component classifies the document at the original level of classification, or at another level, it shall so advise the Assistant to the Director and, unless it is not possible to do so, set a date on which the document shall be declassified automatically. Also, if it is possible to furnish the requester with a brief statement as to why the document cannot be declassified, the component shall furnish such a statement to the Assistant to the Director. The Assistant to the Director thereupon shall deny the request and transmit to the requester the statement furnished him.

(2) If the component declassifies the document, the request shall be further processed under paragraph 7 of this regulation.

Revised

(d) If the component determines that the document is classified and is at least thirty (30) years old, it shall forward the request, together with its recommendation for continuing, modifying, or removing the classification, to the Director for his personal action under Section 5 (E) of E. O. 11652. The Director may continue, modify, or remove the classification. If the Director classifies the document at the original level of classification, or at another level, he also shall specify the reasons for continued classification and the period of time in which the document shall continue to be classified. The Director's decision shall be made known to the requester.

Revised

(e) If possible, action on each request referred to a responsible component under subparagraph 5(a) shall be completed within thirty (30) days of receipt of the request by the Assistant to the Director. If action cannot be completed within thirty (30) days, the component shall so inform the Assistant to the Director and shall explain the reasons for further delay. The Assistant to the Director shall so advise the requester. If the requester does not receive a decision on his request within sixty (60) days, he may apply to the Central Intelligence Agency Information Review Committee, established pursuant to Section 7(B)(2) of E. O. 11652. Any such application shall be processed as an appeal under paragraph 8 of this regulation.

7. Action on Requests Which do not Involve Classified Documents.
When a responsible component determines that a request refers to a

document which is unclassified (subparagraph 6(a), above), or when the responsible component declassifies a document under subparagraph 6(c)(2), the component thereupon shall determine whether the document is exempt from public disclosure under any of clauses (2) through (9) of subsection 552(b), Title 5, United States Code. If the component determines that the document is exempt under any of such clauses, it shall also determine, on the basis of applicable law, regulations and policy, whether the document nevertheless should be made available to the requester.

(a) If the component determines that the document is exempt and should not be made available, it shall so advise the Assistant to the Director who thereupon shall deny the request.

(b) If the component determines that the document is not exempt or that it is exempt but nevertheless should be made available, it shall so advise the Assistant to the Director who shall furnish the requester the copy of the document or give him access to it.

8. Appeal to CIA Information Review Committee.

(a) Notification of Right to Appeal. When the Assistant to the Director advises a requester that a request does not describe a document with sufficient particularity to permit it to be located with reasonable effort (subparagraph 5(b), above), or when he denies a request pursuant to subparagraph 6(c)(1) or 7(a), he shall also advise the requester that he may appeal that decision to the Central Intelligence Agency Information Review Committee, established pursuant to Section 7(B)(2) of E. O. 11652.

(b) Procedures. Any requester, by letter or other written communication, may appeal to the Central Intelligence Agency Information Review Committee any decision conveyed to him under subparagraph 5(b), 6(c)(1) or 7(a), or apply to the Committee in accordance with subparagraph 6(e). The communication should (1) indicate the decision being appealed or, in the case of subparagraph 6(e) applications, the action sought, and (2) present any information or justification the requester may wish to submit. It should be addressed to that Committee, c/o The Assistant to the Director, Central Intelligence Agency,

Washington, D. C. 20505. The Assistant to the Director shall forward the communication to the Committee for appropriate action under subparagraph (c) of this paragraph.

Revised (c) Committee Action on Appeals. Within thirty (30) days the Committee shall consider any appeals forwarded to it under subparagraph (b) and take such action thereon as it may deem appropriate, based on the criteria set forth in Section 5(B) of E. O. 11652 and on other applicable provisions of that Order and of applicable statutes and regulations. The Committee may affirm, overrule, or modify the appealed decision. The Assistant to the Director shall advise the requester of the decision of the Committee.

9. Appeal to Interagency Classification Review Committee. Any request denied by the Director under subparagraph 6(d) and any appeal denied by the CIA Information Review Committee under subparagraph 8(c), other than a request originally denied under subparagraph 7(a), may be appealed to the Interagency Classification Review Committee, established pursuant to Section 7(A) of E. O. 11652. Whenever the Assistant to the Director informs a requester that his request or appeal has been so denied, he also shall advise the requester of his right to appeal to the Interagency Classification Review Committee.

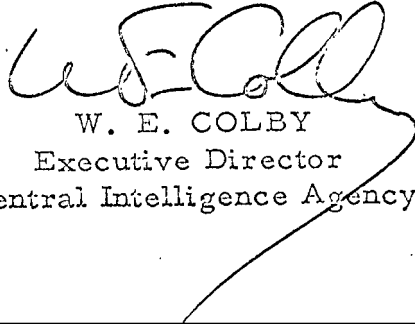
10. Suggestions and Complaints to CIA Information Review Committee. Any person may direct any suggestion or complaint with respect to the Agency administration of the Executive Order and the implementing regulations, including those regarding overclassification, failure to declassify, or delay in declassifying, to the CIA Information Review Committee. The Committee shall consider and resolve all such suggestions and complaints.

11. Fees. In accordance with Section 483a of Title 31 of the United States Code, fair and equitable fees may be charged in connection with any Agency action or service in response to a request under this regulation. Fees shall be based on the cost to the government to conduct the necessary research and on the other standards prescribed by Section 483a. If a fee is to be charged, the requester shall be so informed by the Assistant to the Director and payment, or satisfactory assurances of payment, obtained from the requester before the action or service is undertaken. Payment shall be by check or postal money order made payable to the Treasurer of the United States.

12. Revocation. The CIA notice of July 21, 1967 (32 Fed. Reg. 140, July 21, 1967) is hereby revoked.


13. Effective Date. This regulation shall become effective upon its publication in the Federal Register.

21 July 1972
(Date)


W. E. COLBY
Executive Director
Central Intelligence Agency

Certified true copy:

21 July 1972
(Date)


Lawrence R. Houston
General Counsel

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